

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

SENDMYGIFT.COM, Inc.,

BKY No. 00-35021 (GFK)
Chapter 11

Debtor

SENDMYGIFT.COM, Inc.,

Plaintiff,

v.

ADV 04-3035

**DEFENDANT DARYL SHIBER'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC,

Defendants.

TO: SENDMYGIFT.COM and its attorney David Jon Hoiland, 120 South
6th Street, Suite 1100, Minneapolis, MN 55402.

NOTICE OF MOTION

PLEASE TAKE NOTICE that defendant Daryl Shiber will call up for
hearing and disposition of his Motion for Summary Judgment in the above-
captioned cause at a time determined by the Court and before the Honorable Judge
Gregory F. Kishel.

MOTION FOR SUMMARY JUDGMENT

Defendant Daryl Shiber hereby moves the court for an order granting summary judgment and dismissing plaintiff's libel *per se* claim with prejudice and on the merits. As a matter of law, plaintiff failed to prove that defendant Daryl Shiber is subject to liability for plaintiff's libel *per se* claim.

This motion is based upon the pleadings, depositions and admissions on file, together with the affidavits, memorandum of law, exhibits, all files and records herein and arguments of counsel.

Dates: July 16, 2004

-e- John F. Cameron
John F. Cameron (#218613)
Cameron Law Office
4100 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 341-0394

ATTORNEY FOR DEFENDANTS

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DISTRICT OF MINNESOTA**

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Chapter 11

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Plaintiff,

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ADV 04-3035

**DEFENDANT DARYL SHIBER'S
MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION FOR
SUMMARY JUDGMENT**

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC,

Defendants.

INTRODUCTION

In its advisory proceeding, Plaintiff Sendmygift.com asserted three counts including count three asserted solely against Daryl Shiber for libel *per se*. As a matter of law, plaintiff has failed to prove that defendant Daryl Shiber is subject to liability for plaintiff's libel *per se* claim. Defendant Daryl Shiber hereby moves the court for an order granting summary judgment and dismissing plaintiff's libel *per se* claim with prejudice and on the merits.

FACTS

On May 31, 2001, K.G.S., LLC purchased an office building at 12345 Portland Building, Burnsville MN (hereinafter “Portland Building”) from plaintiff for \$2.4 million. See Exhibit A to Cameron Aff. (Excerpts from Daryl Shiber Deposition hereinafter “Shiber Depo.” at pp. 90) and Exhibit B to Cameron Aff. (Closing Statement dated May 31, 2001).

In June 2003, Sendmygift.com caused several individuals to enter into the Portland Building over several days and remove numerous items from the Portland Building. See Exhibit C to Cameron affidavit (Excerpts from Joseph Burnett Deposition (hereinafter “Burnett Depo.”) pp. 18-20. While visiting the Portland Building in June 2003, Mr. Shiber discovered that an assortment of property had been removed from the Portland Building including, but not limited to, computers, monitors, printers, desks, telephones, chairs, china and antique table. See Shiber depo. at pp. 33-39. The missing property was reported to the Burnsville Police on or about June 25, 2003. See Shiber depo. at p. 40. The property loss was also reported to Zurich Insurance which covered the Portland Building. See Shiber depo. pp. 47-48. Plaintiff asserts that these reports support a libel claim against Mr. Shiber. See Plaintiff’s Complaint. At his deposition, Sendmygift.com’s President Joe Burnett was unable to identify specific libelous statements made by Mr. Shiber concerning Sendmygift.com. See Burnett Depo. at pp. 56-57.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD.

The United States Supreme Court has emphasized the importance of summary judgment in resolving civil litigation like the present.

Summary judgment procedure is properly regarded not as a disdain procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.

Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986).

In following *Celotex*, the Minnesota Court of Appeals has reiterated the appropriateness of summary judgment against a party who fails to establish an essential element of that party's case. *Davis v. Midwest Discount Securities, Inc.*, 439 N.W.2d 383, 386 (Minn. Ct. App. 1989). A party opposing a summary judgment motion must present "significant probative evidence" showing that there is a genuine issue for trial. *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989)(citing *Celotex*, 477 U.S. at 324). A party cannot rely upon mere unsupported allegations of fact. Minn. R. Civ. P. 56.06; *Marose v. Hennameyer*, 347 N.W.2d 509 (Minn. Ct. App. 1984); *see also Ludgren v. Eusterman*, 370 N.W.2d 509 (Minn. Ct. App. 1985); If a fact will affect the outcome of the case because the law precludes that outcome, the fact is not material. *Rather v. W.T. Grant Co.*, 300 Minn. 223, 229, 219 N.W.2d 641, 646 (1974).

A. Sendmygift.com is unable to sustain its libel claim.

Because Sendmygift.com is unable to identify a libelous communication made by Mr. Shiber, its libel claim must be dismissed. "For a statement to be defamatory, (1) it must

be false, (2) it must be communicated to another, (3) and it must tend to harm the plaintiff's reputation." *Bol v. Cole*, 561 N.W.2d 143, 146 (Minn. 1997); citing *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980). To determine whether a statement is false, Minnesota courts consider the (1) specificity and precision of the statement; (2) verifiability; (3) the social context in which it was made, and (4) public context. *McClure v. American Family Mut. Ins. Co.*, 223 F.3d 845, 853 (8th Cir. 2000). The burden of establishing each element of a defamation claim falls on the Plaintiff. *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997). *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 410 (Minn. 1994) ("The elements of defamation require the Plaintiff to prove that a statement was false "). *See, also, Jeffries v. Metro-Mark, Inc.*, 45 F.3d 258, 261 (8th Cir. 1995) (rejecting Plaintiff's argument that Minnesota law places burden of proving truth on Defendant and holding that the burden of proving falsity was on Plaintiff).

Sendmygift.com is unable to identify any libelous communication made by Mr. Shiber. Libel is defined as, "a malicious publication, expressed either in print or writing or by signs and pictures, tending to injure the reputation of another or to expose him to public hatred, contempt or ridicule, or to injure him in the maintenance of his business." *Vojak v. Jensen*, 161 N.W.2d 100 (Iowa 1968). Sendmygift.com is unable to identify any libelous statements made by Mr. Shiber. As a result, Sendmygift.com's claim must be dismissed.

B. The Statements, if any, were made for a proper purpose and on a proper occasion.

A communication or publication made in good faith upon any subject matter in which the party communicating or publishing has an interest, or in reference to which he has a duty, public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty is privileged. *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 557 (Minn.App.1994) (quoting *Friedell v. Blakely Printing Co.*, 163 Minn. 226, 229-30, 203 N.W. 974, 975 (1925)), *review denied* (Minn. Feb. 14, 1995). At the time the Burnsville Police and Zurich insurance were made aware of the property loss, Mr. Shiber did not know who had removed the property from the Portland Building. The ownership of the removed property is the subject of this lawsuit. It is an unresolved issue, however, at the time Mr. Shiber discovered the property missing, he did not know who had taken the property. As such, he had a duty to report the loss to the police and the insurance company.

CONCLUSION

Plaintiff's libel claim fails because plaintiff is unable to identify any libelous statement made by Mr. Shiber. Furthermore, all statements provided to the police or the insurance company are privileged communications were made on a proper occasion and for a proper purpose. Accordingly, summary judgment should be granted and this matter dismissed with prejudice.

Dates: July 16, 2004

-e- John F. Cameron .
John F. Cameron (#218613)
Cameron Law Office
33 South Sixth Street, Suite 4100
Minneapolis, MN 55402
(612) 341-0394

Attorney for Defendants

UNITED STATES BANKRUPTCY COURT
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AFFIDAVIT OF JOHN F. CAMERON

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC,

Defendants.

John F. Cameron, being first duly sworn upon oath, deposes and says the following:

1. I am the attorney representing the defendants, Daryl A. Shiber, Kimberly G. Shiber, DHS Corporation and K.G. S., LLC in the above entitled matter and am licensed to practice law in the state of Minnesota.
2. In support of Defendant Daryl Shiber's Memorandum in Support of his Motion for Summary Judgment to dismiss Plaintiff's libel claim, I annex the following true and correct copies of documents produced herein:

EXHIBIT**DESCRIPTION**

- A. Excerpts of Daryl Shiber's Deposition dated June 22, 2004.
- B. Copy of the Portland Building Settlement Statement dated May 31, 2001.
- C. Excerpts of Joe Burnett's Deposition dated July 1, 2004.

Dates: July 16, 2004

-e- John F. Cameron .
John F. Cameron (#218613)
Cameron Law Office
4100 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 341-0394

ATTORNEY FOR DEFENDANTS

EXHIBIT A

1 Portland Avenue in Burnsville?

2 A. A real estate agent brought my attention to it.

3 Q. Was that Cal Ladd?

4 A. Yes, it was.

5 Q. Do you remember about what time it would have been?

6 A. Boy, now you're asking about memory. A lot of my
7 short-term memory on dates, and dates long-term
8 memory, both ways -- maybe it's age.

9 Q. Let's see --

10 A. I'm going to guess, probably 2000 -- I don't even
11 know. 2000, I think.

12 Q. Yeah, the closing deed shows a date of May 31,
13 2001.

14 A. Okay.

15 Q. Does that help you remember a little bit?

16 A. Yeah.

17 Q. So if the closing was May 31, 2001, you have some
18 sense of how long you were dealing on that property
19 before that time?

20 A. It was a very short time frame.

21 You mean before I closed on it, or --

22 Q. Yeah.

23 A. Well, it was at least -- I think when I bought the
24 building, I had 60 days to close, if I remember
25 right. And it was prior to that -- I think I came

1 down and pick it up, you assume that it's yours.

2 I didn't even assume that. I felt I bought
3 it. I felt I bought that stuff.

4 MR. HOILAND: Off the record.

5 (Discussion held off the record.)

6 MR. HOILAND: Mark that, please.

7 (Shiber Deposition Exhibit No. 3 marked
8 for identification.)

9 BY MR. HOILAND:

10 Q. I'm going to hand you what's been marked Exhibit
11 No. 3. At the top it's called a settlement
12 statement.

13 A. Okay.

14 Q. On the third page, there's a signature by Mr.
15 Burnett. And there's also someone else's signature
16 for --

17 A. My wife.

18 Q. Is that Kimberly's --

19 A. Yes, it is.

20 Q. And that's dated -- somebody dated it there --

21 A. Looks like 5-31-01.

22 Q. Okay. And the first line of this, line one, 101,
23 is called -- can you read that?

24 A. Yeah, let me take a look.

25 "Contract sales price."

1 little deeper here.

2 Okay.

3 Q. Is this the police report you made when there was a
4 burglary at your building?

5 A. Yes.

6 Q. When you noticed the burglary, what equipment did
7 you think had been taken?

8 A. Well, when we first came into the building -- and
9 we came in there to possibly rent part of the
10 building out to another individual. Because I
11 hadn't gone out there for periods of time, you
12 know.

13 And when we walked in the door, I see -- you
14 know, I didn't see. Actually my guy that works
15 with me saw that these things were missing out of
16 the deal. I mean where's -- "What's that all
17 about?"

18 Q. What was missing?

19 A. Well, there were some tables and -- oh, there was
20 like a -- some antique shovel things, and some of
21 that kind of stuff.

22 Q. Antique what?

23 A. Oh, antique bobcat or something -- you know, a
24 little item. And there was a couple tables
25 missing. And I said, "Wow, what's going on there?"

1 And he said he didn't know.

2 So we went upstairs. And all of a sudden we
3 see all this merchandise gone.

4 Q. What merchandise is that?

5 A. That was like a conference table, office furniture.
6 A shelving off the side of the wall was either
7 unbolted or ripped off of the wall.

8 Q. Was that just in that special room, or was it other
9 places, too?

10 A. No, this was different places, different parts of
11 the building.

12 Q. Shelving from different parts of the room was
13 ripped off the walls?

14 A. Yes. In the nice office, which is probably the
15 president of the company's office type thing.

16 Q. So the shelving was ripped off from the president's
17 office?

18 A. Yes. Off the wall. And then we went -- started
19 investigating, going through. And we got people
20 we're showing the building to. And we kind of cut
21 the meeting a little bit short because I wanted to
22 find out what's going on.

23 I went through the building; I see all the
24 computers gone. I see chairs gone. I see all the
25 faxes and copiers and printers and all kinds of

1 stuff gone.

2 So then I went and did a complete check-out
3 through the whole building, and found that my --
4 there was an antique table that I had there, that
5 was gone. And some crystal that I had seen was
6 missing. And Czechoslovakian crystal, which is
7 very expensive stuff.

8 Q. A piece of crystal or --

9 A. No, there was several pieces of crystal that was
10 gone.

11 Q. Several pieces?

12 A. Yes.

13 Q. How much room would they take?

14 A. Well, it was taken in certain areas of the
15 building. In other words, when the one office --
16 there was a Czechoslovakian piece of glass in
17 there. And I remembered that there was one in
18 there.

19 And then we went to two or three other offices
20 and saw some other crystal that was missing.
21 Because it's just things you remember. There's so
22 much stuff in the lower part, you couldn't even
23 tell what's all gone, you know.

24 And then we went -- and all of a sudden, I
25 said, well, we got to get in the building -- into

1 the room with the servers and that stuff.

2 And opened the door and somebody had --
3 because the door was locked, somebody had pulled
4 the tile apart to get over the top to unlock the
5 door.

6 And then they did the same thing with this
7 other room. They had went over the top and
8 unlocked the door. And then, of course, all that
9 stuff was gone.

10 And all the wires are clipped. All the -- I
11 don't know if they're fiber wires, or whatever the
12 wires are -- were all snipped off.

13 And so, you know -- and then there was desks
14 and chairs and all kinds of stuff gone.

15 So started investigating a little further.
16 And then I saw that somebody was evidently in there
17 with a forklift. Because where they were trying to
18 get the stuff over the top of the -- in the
19 warehouse area, somebody had missed, and jammed the
20 forklift into the wall, and ripped that -- kind of
21 ripped the wall out.

22 And, let's see, what else.

23 Q. Now, the equipment that was missing, was there any
24 equipment besides what you purchased from
25 SENDMYGIFT that was missing?

- 1 A. Oh, yes.
- 2 Q. What was missing besides what you had purchased
3 from SENDMYGIFT?
- 4 A. This crystal --
- 5 Q. That's not equipment, though. Any equipment
6 missing?
- 7 A. Oh, equipment. I think phones were gone out of
8 there. A bunch of phones gone out of there.
- 9 Q. Any idea how many phones?
- 10 A. I can't remember. But my guys, I think, listed it,
11 and, you know --
- 12 Q. So as far as equipment, was there anything else
13 that didn't belong, at one time, to SENDMYGIFT?
14 Was the SENDMYGIFT equipment the only equipment
15 that was missing?
- 16 A. If you're figuring when I bought the building, like
17 the telephones and that kind of stuff, the phones
18 were gone, yeah.
- 19 Q. Okay.
- 20 A. You know, that was SENDMYGIFT's at one time.
- 21 Q. And most everything from that one computer room?
- 22 A. Yes, the computer room went. But, no, everything
23 else was -- throughout the whole building,
24 merchandise was taken.
- 25 Q. Did it seem like most everything that you had

- 1 gotten from SENDMYGIFT was what was missing?
- 2 A. No, there was more than that.
- 3 Q. Were there some things from SENDMYGIFT that were
- 4 still there?
- 5 A. Yes.
- 6 Q. But as far as equipment goes --
- 7 A. At one time, you mean. Yeah.
- 8 Q. Yeah. As far as equipment goes, was there anything
- 9 besides the SENDMYGIFT equipment that was missing?
- 10 A. I guess I don't recall right now.
- 11 Q. Okay. Did you make a claim for the crystal to the
- 12 insurance company?
- 13 A. I'm trying to think if I did or not. I think so,
- 14 yes.
- 15 Q. So you're pretty sure you listed that crystal?
- 16 A. Pretty sure.
- 17 Q. Do you have an idea how much that crystal was
- 18 worth?
- 19 A. I know I did. It was a table, and -- I think, you
- 20 know, the total of that stuff was probably -- I'm
- 21 guessing now, fifteen hundred, two grand, something
- 22 like that.
- 23 Q. For the crystal?
- 24 A. The crystal and the table.
- 25 Q. Fifteen hundred to two grand?

1 A. Yeah, probably.

2 Q. Did you make a claim for the table?

3 A. I think, yes, I did.

4 Q. And that was the antique table?

5 A. Yes.

6 MR. HOILAND: Mark that, please.

7 (Shiber Deposition Exhibit No. 9 marked
8 for identification.)

9 BY MR. HOILAND:

10 Q. How about that bobcat, how much was that worth,
11 that antique bobcat?

12 A. Oh, I have no idea.

13 Q. Ten dollars, a hundred dollars?

14 A. I have no idea. I think that was stuff that was in
15 there, probably when SENDMYGIFT.COM was in there.

16 How much was it worth? Probably 300 bucks on
17 that one piece, but I'm guessing. I know a little
18 bit about antiques.

19 And a couple of the other antiques that were
20 in there, probably -- I don't know, you're probably
21 looking at five hundred to a thousand for all that
22 stuff that was in there, something like that.

23 Q. I'm handing you what's been marked Exhibit No. 9.
24 This seems like it's part of the Burnsville Police
25 Report. Is that --

1 A. Yes. That's what it says, yes.

2 Q. It starts out at the top of the page, on June 25,
3 '03, it was called. Is that about the time you
4 reported the break-in?

5 A. It appears to be, yes.

6 Q. And I want you to read where I've highlighted in
7 the margin here. It starts at the end of line with
8 "Shiber." If you could read that.

9 A. Yeah, "Shiber pointed out areas where conference
10 tables, cabinets, copy machines, computers, fiber
11 optic's equipment, and other large business related
12 items missing from the business totaling around a
13 million dollars."

14 Where I come up with that figure is from a guy
15 by the name of Tom Moline -- that's a technology
16 type guy. And so I was using his thoughts on the
17 deal. Because I have no clue what that stuff's
18 worth. I have no clue what it's worth.

19 Q. So when you were telling me a minute ago that when
20 you bought the building and the property from
21 SENDMYGIFT through the bankruptcy court-approved
22 sale, you had no idea what the equipment was worth;
23 you thought maybe thirty-five thousand, you seen
24 something --

25 A. No, I saw -- the only reason that number comes up

1 Q. Yeah. You understand that?

2 A. I understand when they raided him, or whatever they
3 did, that he had made those statements.

4 Q. Okay.

5 A. What I don't understand is how he got in the
6 building.

7 Q. Okay. Since that time, have you made any demands
8 to Mr. Burnett for anything back?

9 A. Other than through a police report? I mean --

10 Q. Directly to Mr. Burnett.

11 A. No.

12 Q. Okay. When you found out that there had been some
13 things taken from your building, did you call the
14 police right away?

15 A. Yes, I did.

16 Q. Then after that, did you contact your insurer?

17 A. I don't know if I did it then, or was it the next
18 day. I had to do that, otherwise -- I mean that
19 was the prudent thing to do, call. I think you
20 have so much time that you got to call your
21 insurance company.

22 Q. Do you remember who you talked to?

23 A. I think I called my agency, is who I think I
24 called. That would have been Rick Eckhart.

25 Q. Is he in Minneapolis?

- 1 A. Yeah. Well, he's in Brooklyn Center, or somewhere.
- 2 Q. What agency is he with?
- 3 A. He's with Brouillette Agency.
- 4 Q. How do you spell that?
- 5 A. I think it's B-r-o-u-i-l-l-e-t-e, (sic.) or
- 6 something like that. Brouillette.
- 7 Q. Do you remember talking to Monte Franz?
- 8 A. Yes.
- 9 Q. He was an insurance adjuster?
- 10 A. He was the adjuster they had hired. I think Zurich
- 11 hired him to --
- 12 Q. Do you remember what value you told him you thought
- 13 was probably missing?
- 14 A. I think, again, Tom Moline talked to him probably
- 15 more than I did. I actually let the -- I think I
- 16 had let -- I had talked to him, but I think I had
- 17 let Doug Bell and Tom Moline talk to him more than
- 18 I did.
- 19 Q. What did Doug Bell know about the equipment values?
- 20 A. He didn't know anything about it. I was just too
- 21 busy to talk to the guy too long.
- 22 Q. So Tom Moline would have been the one that would
- 23 have --
- 24 A. Tom Moline would have been the one that -- he works
- 25 for my tenant, who is C & L Communications. He

EXHIBIT B

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265 (Page 1)

Type of Loan			6. File Number	7. Loan Number	8. Mortgage Ins Case Number
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input checked="" type="checkbox"/> Conv Unins	TL 104652		
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv Ins.				

Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

G. Name and Address of Borrower K.G.S., LLC 639 Emerson Ave South Mpls, MN 55423	E. Name, Address, and Tax ID Number of Seller Sendmygift.com Tax ID #	F. Name and Address of Lender Premier Bank 2151 Third St. White Bear Lake, MN 55110
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J. Property Location (Complete address, including legal description, if necessary) Burnsville Corporate Center 2nd Addition, Block 1, Lot p/o 1, Dakota County 2345 Portland Ave. S. Burnsville, MN	H. Settlement Agent Name, Address and Tax ID Number Title Protection, Inc. 8110 Eden Road Eden Prairie, MN 55344 Tax ID: 41-1664613	I. Settlement Date 5/31/01 Fund: 5/31/01
	Place of Settlement Title Protection, Inc. 8110 Eden Road Eden Prairie, MN, MN 55344	

Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
00. Gross Amount Due from Borrower		400. Gross Amount Due to Seller	
01. Contract Sales Price	\$2,400,000.00	401. Contract Sales Price	\$2,400,000.00
02. Personal Property		402. Personal Property	
03. Settlement Charges to borrower	\$15,954.75	403.	
04.		404.	
		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
06. City property taxes thru		406. City property taxes thru	
07. County property taxes thru		407. County property taxes thru	
08. Annual assessments thru		408. Annual assessments thru	
09. School property taxes thru		409. School property taxes thru	
10. MUD taxes thru		410. MUD taxes thru	
11. Other taxes thru		411. Other taxes thru	
12. RE Tax 5-31 to 6-30-01	\$5,099.50	412. RE Tax 5-31 to 6-30-01	\$5,099.50
13. Premier Bk int 5-31 to 6-19-01	\$5,788.96	413. Premier Bk int 5-31 to 6-19-01	\$5,788.96
14.		414.	
15.		415.	
16.		416.	
20. Gross Amount Due From Borrower	\$2,426,843.21	420. Gross Amount Due to Seller	\$2,410,888.46

00. Amounts Paid By Or in Behalf Of Borrower		500. Reductions in Amount Due to Seller	
01. Deposit or earnest money	\$100,000.00	501. Excess Deposit	
02. Principal amount of new loan(s)		502. Settlement Charges to Seller (line 1400)	\$150,338.50
03. Existing loan(s) Premier Bank	\$980,436.57	503. Existing loan(s) Premier Bank	\$980,436.57
04. 2nd Mtg. Thomas DelLisle	\$220,000.00	504. P & I + Late fees Premier Bank	\$267,748.58
05. Down Pmt. Wire	\$1,200,000.00	505. James R. Conway	\$318,542.43
06.		506. 2 Judgement Escrows	\$121,944.45
07.		507. Escrow Conway Payoff	\$10,308.77
08.		508.	
		509.	

Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
10. City property taxes thru		510. City property taxes thru	
11. County property taxes thru		511. County property taxes thru	
12. Annual assessments thru		512. Annual assessments thru	
13. School property taxes thru		513. School property taxes thru	
14. MUD taxes thru		514. MUD taxes thru	
15. Other taxes thru		515. Other taxes thru	
16. Sp. assmnt 2nd 1/2 2001 RE Tax	\$344.87	516. 2nd 1/2 2001 RE Taxes	\$38,326.77
17.		517. 1st 1/2 2001 RE Taxes	\$32,422.76
18.		518. Sp. Assmnt 2nd 1/2 2001 Tax	\$344.87

Settlement Charges						
00. Total Sales/Broker's Commission based on price	\$2,400,000.00	@6%	=	\$144,000.00		
Division of Commission (line 700) as follows:					Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
01. \$144,000.00	to	Coldwell Banker Burnet				
02. \$0.00	to					
03. Commission Paid at Settlement						\$144,000.00
00. Items Payable in Connection with Loan						
01. Loan Origination Fee	to					
02. Loan Discount	to					
03. Appraisal Fee	to					
04. Credit Report	to					
05. Lender's Inspection Fee	to					
06. Mortgage Insurance Application	to					
07. Attorneys Fees (Estimate)	to	Leonard & O'Brien Law Office			\$2,112.50	
08. Assumption Fee	to	Premier Bank			\$10,000.00	
09. Processing Fee	to					
00. Tax Service Fee	to					
01. Premium Yld Sprd	to					
02. Courier Fee	to					
03. Underwriting Fee	to					
04. Commitment Fee	to					
05. Document Preparation Fee	to					
00. Items Required by Lender To Be Paid in Advance						
01. Interest from	to	@ \$0.0000	/day			
02. Mortgage Insurance Premium for	months	to				
03. Hazard Insurance Premium for	years	to				
00. Reserves Deposited With Lender						
Hazard insurance	months @		per month			
02. Mortgage insurance	months @		per month			
03. City property taxes	months @		per month			
04. County property taxes	months @		per month			
05. Annual assessments	months @		per month			
06. School property taxes	months @		per month			
07. MUD taxes	months @		per month			
08. Other taxes	months @		per month			
09. Aggregate Adjustment						
00. Title Charges						
01. Settlement or closing fee	to	Title Protection, Inc.			\$500.00	
02. Abstract or title search (Escrow)	to	Le Sueur County Abstract				\$1,000.00
03. Closing Fee	to	Le Sueur County Abstract				\$500.00
04. Title insurance binder	to					
05. Attorneys Fee	to					
06. Lenders Policy	to					
07. Owners Policy & Lend. Policy	to				\$2,652.75	
includes above items numbers:						
08. Title insurance	to	Title Protection, Inc.				
includes above items numbers:						
09. Lender's coverage		\$0.00/\$0.00				
10. Owner's coverage		\$2,400,000.00/\$0.00				
11. Name Search	to	Title Protection, Inc.			\$25.00	
12. Assessment Search	to	Title Protection, Inc.				\$30.00
00. Government Recording and Transfer Charges						
Recording Fees	Deed \$19.50	Mortgage \$19.50	Releases \$97.50		\$39.00	\$97.50
02. City/county tax/stamps	Deed	Mortgage	to			
03. State tax/stamps	Deed \$4,686.00	Mortgage \$540.50	to Dakota County Treasurer		\$540.50	\$4,686.00
04. Tax certificates	to					
05. Conservation Fee	to	Dakota County			\$5.00	\$5.00
06. Recording Service Fee	to	Title Protection, Inc.			\$20.00	\$20.00
00. Additional Settlement Charges						
01. Survey	to					
02. Pest Inspection	to					
03. Plat Drawing	to	Title Protection, Inc.			\$60.00	
04. Courier Fee	to	Title Protection, Inc.				

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement

S.S., LLC by:

Robert A. Shum

sendmygift.com by:

Joseph A. Burnett Jr. Pres.

SETTLEMENT AGENT CERTIFICATION

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Joseph A. Shum *5-31-01*
Settlement Agent Date

Warning: It is a crime to knowingly make false statements to the United States in this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Seller's Taxpayer Identification Number Solicitation and Certification

You are required by law to provide the Settlement Agent named above with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under Penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

Seller's Signature Date

EXHIBIT C

1 A. Yes.

2 Q. And on page 2 at the bottom, is that your signature?

3 A. Yes, it is.

4 Q. And on page 4, what's been Bate stamped as number 9,
5 is that your signature at the bottom?

6 A. Yes, it is.

7 Q. Turning to the last page, is that your signature on
8 the bottom?

9 A. Yes, it is.

10 Q. And on the last page, the top of the page, it has a
11 couple of paragraphs crossed out and a couple of hatch
12 marks to the left with initials. Are any of those
13 initials yours?

14 A. They appear to be. The other initials are not the
15 person who signed the purchase agreement, though.

16 Q. Now, what was your understanding relative to
17 SENDMYGIFT.COM being able to leave property in the
18 building after the closing?

19 A. Could you restate the question?

20 Q. Sure. It's my understanding in this case that
21 SENDMYGIFT's contention is that it had property in the
22 Portland building that it was entitled to go in and
23 get; is that a correct understanding?

24 A. Correct.

25 Q. And at some point, SENDMYGIFT.COM went in and took the

1 property, correct?

2 A. Agents of SENDMYGIFT.COM

3 Q. Did they do it with or without SENDMYGIFT.COM's
4 permission and consent?

5 A. With.

6 Q. In fact, SENDMYGIFT.COM instructed them to do it,
7 correct?

8 A. Correct.

9 Q. Who was that, that did that?

10 A. I instructed them.

11 Q. What company?

12 A. Pride, P-R-I-D-E, Dexter Pride.

13 Q. Is that a moving company?

14 A. No. It is a guy who said he could move all of the
15 equipment safely with our guys' supervision.

16 Q. And how is it that you found Mr. Pride?

17 A. Initially, I met him on a golf course.

18 Q. How long ago was that?

19 A. Approximately two years ago.

20 Q. What golf course?

21 A. Gross, in Minneapolis.

22 Q. How is it that you believe that he was the right
23 person to hire for this job?

24 A. I had met some of his friends. He's six foot eight, a
25 former football player for two or three different

1 teams. He said he could have a full crew there. He
2 was well known in the city of Minneapolis. I met him
3 and a couple of the council members. He had, you
4 know, had a high degree of credibility with me.

5 Q. Are you aware whether he ever acted as an agent for
6 companies in moving property from buildings?

7 A. I'm not aware of that.

8 Q. Did you ask him, "Have you ever moved anybody?"

9 A. He said he could perfect the move, and I believed him.

10 Q. Did you ask him for any references?

11 A. Well, I met him with the mayor, and I met him with
12 several council members, and he is well known to the
13 city government in Minneapolis, been to the newspaper
14 in Minneapolis.

15 Q. What about those relationships made you believe he was
16 competent to enter a building and remove property?

17 A. I don't recall the mayor's name at this moment, but I
18 had heard the mayor say, "Anything J.D. does, he does
19 it well."

20 Q. Was that Mr. Rybak?

21 A. Who was the mayor right before Rybak?

22 Q. Sharon Sayles Belton?

23 A. Sharon Sayles Belton. Thank you. And also Mr. Rybak,
24 on a recent occasion, kind of confirmed that.

25 Q. How is it that these individuals, if you know, know

1 didn't do it, but that's what Shiber says." He told
2 Doug Bell that I stole the equipment. He told a
3 couple of the other people that worked with Fiber Pop
4 (phonetic) -- I forget his name. It was the gentleman
5 that was at the building when the police broke down
6 the door.

7 Q. Jim Locks (phonetic)?

8 A. No.

9 Q. Tom Moline?

10 A. Tom Moline. Thank you.

11 Q. Now, is SENDMYGIFT.COM making a claim that Mrs. Shiber
12 has made any statements that have defamed
13 SENDMYGIFT.COM?

14 A. I don't know the legal proceeding against her.

15 MR. HOILAND: I'll state, no.

16 BY MR. CAMERON:

17 Q. All right. And what did Mr. Shiber specifically say
18 to the police officer regarding SENDMYGIFT.COM?

19 A. I couldn't tell you. I --

20 Q. You've answered my question. And the same would be
21 true with the insurance agent?

22 A. The insurance agent told me Shiber told him that I
23 stole the equipment.

24 Q. What did he say about SENDMYGIFT.COM?

25 A. I think he said something like me representing

1 SENDMYGIFT.COM, broke into his building and stole it.

2 Q. How is it that you're aware that Mr. Shiber
3 communicated to Doug Bell that you stole the property
4 out of the building?

5 A. I was right in front of Daryl Shiber's house with Mr.
6 Doug Bell when Daryl said, asserted that.

7 Q. So you witnessed Mr. Shiber saying that about
8 yourself?

9 A. Yes, I did.

10 Q. What did Mr. Shiber specifically say in that
11 conversation? Repeat it back to me as if you were
12 recording, playing back his statement.

13 A. If you will give me just a moment, I'm trying to
14 recall the phrases that Mr. Shiber used. They were
15 pretty deflammatory [sic.] and threatening. He
16 basically said something to the effect that, "You
17 stole that fucking equipment from my building." He
18 was right in my face, and I denied stealing anything
19 from his building. He said, "I don't give a fuck
20 about that Judge or Sarah Wencil or Dave Hoiland.
21 I'll sue them all. Who let you in the building? Dan
22 let you in. Dan told me he let you in." I said, "Dan
23 never told me he let me in." I honestly don't know
24 who let me in or opened the door. He was threatening,
25 "If I find out who stole that stuff, I'll kill 'em."